

UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

DOCKET NO. 3:12-cv-00104-FDW-DSC

NATIONAL ASSOCIATION FOR STOCK
CAR AUTO RACING, INC., MOTORSPORTS
AUTHENTICS, LLC, SPEEDWAY
MOTORSPORTS, INC., SPEEDWAY
PROPERTIES COMPANY, LLC,
INTERNATIONAL SPEEDWAY
CORPORATION, RCR RACE OPERATIONS,
LLC, ROUSH FENWAY RACING, LLC, JOE
GIBBS RACING, INC., HENDRICK
MOTORSPORTS, LLC, JEFF GORDON, INC.,
DEJ HOLDINGS, LLC, EIGHTY-EIGHT, LLC,
JR MOTORSPORTS, LLC, RUSTY
WALLACE, INC., PENSKE RACING SOUTH,
INC., PENSKE SYSTEM, INC., DALE
EARNHARDT, INC., RPAC RACING, LLC,
MICHAEL WALTRIP RACING HOLDINGS,
LLC, STEWART-HAAS RACING, LLC, CHIP
GANASSI RACING WITH FELIX SABATES,
INC., and POCONO INTERNATIONAL
RACEWAY, INC.,

Plaintiffs,

v.

CHARLES KITCHEN et al.,

Defendants.

ORDER AND DEFAULT
JUDGMENT

THIS MATTER comes before the Court on Plaintiffs' Motion For Entry Of Default And Default Judgment For Forfeiture Of Seized Counterfeit Goods, And For Voluntary Dismissal Without Prejudice As To All Other Claims ("Motion"). Having reviewed the Motion and attachments and the other documents in the case file, and no party other than Plaintiffs having appeared in this action, the Court now FINDS and CONCLUDES as follows:

1. All named Defendants have been personally served with Summons, Complaint, and the order of this Court authorizing seizure of counterfeit goods pursuant to 15 U.S.C. § 1116(d) that was in effect at the time of such service.

2. No named Defendant has answered or otherwise appeared in this action.

3. Service by publication of appropriate notice of forfeiture of all goods seized in this action (“the Goods”) has been completed as required by Supplemental Rule G, F.R.Civ.P. Such service by publication was complete by no later than December 20, 2012.

4. The time for any person to file a claim as to any of the Goods has expired, and no person has appeared to assert a claim as to any of the Goods or to object to the forfeiture thereof.

5. The Goods are counterfeit, and have been offered for sale in violation of the rights of one or more Plaintiffs as registrant(s) of a mark registered in the Patent and Trademark Office, and/or in violation of one or more Plaintiffs’ rights under 15 U.S.C. § 1125(a).

6. Appropriate notice pursuant to 15 U.S.C. § 1118 of proposed destruction of the Goods has been provided to the U.S. Attorney for this District.

Based on such findings and conclusions, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. The Clerk is directed to enter default as to the Goods *in rem*.

2. Upon such default, judgment is hereby entered pursuant to Rule 55(b)(2), F.R.Civ.P., that all interests of any parties in and to the Goods are forfeited.

3. Plaintiffs are authorized to destroy the Goods pursuant to 15 U.S.C. § 1118. Plaintiffs also may, but need not, retain any of the Goods for evidentiary or archival purposes, and/or may donate them for charitable use.

4. All other claims asserted in this action against any named Defendants are voluntarily dismissed without prejudice pursuant to Rule 41(a)(2), F.R.Civ.P.

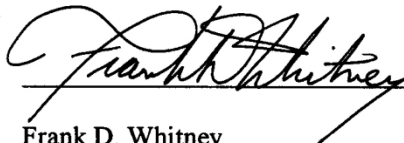
5. The bond posted by Plaintiffs on February 22, 2012 [Docket # 10] is cancelled.

6. This Order And Default Judgment shall be entered as a final judgment in this action, and the Clerk shall close the file.

7. While this order is unsealed, all previous filings and orders in this case are to remain sealed.

IT IS SO ORDERED.

Signed: January 23, 2013



Frank D. Whitney
United States District Judge

